

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEB 26 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
In re Consolidated Applications of)
)
EchoStar Communications Corporation,)
General Motors Corporation, and)
Hughes Electronics Corporation,)
)
Transferors,)
)
and)
)
EchoStar Communications Corporation)
)
Transferee,)
)
For Authority to Transfer Control)

CS Docket 01-348 /

TO: The Commission

REPLY COMMENTS OF SATELLITE RECEIVERS, LTD.

1. Satellite Receivers, Ltd. ("Satellite Receivers"), by its attorneys, hereby submits this reply (the "Reply") to the Comments filed with the Commission in regards to the proposed transfer of licenses filed by EchoStar Communications Corporation ("EchoStar"), Hughes Electronics Corporation ("Hughes") and General Motors Corporation (collectively, the "Applicants") that would result in the merger of the two Direct Broadcast Satellite ("DBS") providers, EchoStar and DIRECTV, as well as the Petitions to Deny the proposed transfers. In its Comments, Satellite Receivers opposed the creation of a merged EchoStar and DIRECTV ("New EchoStar") as it is

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anticompetitive and will hinder the development of new services. As such, the proposed merger is not in the public interest.

2. One commenter stated that it was “impossible [for him] to think of a serious argument against the merger.”¹ From the well-reasoned comments and petitions that were submitted in this proceeding, it is clear that there are a number of serious arguments against the merger. In this Reply, Satellite Receivers will focus on two: the potential that New EchoStar would provide video programming and advanced services to rural America and the barriers to entry that creation of New EchoStar would pose to new broadband services.

Merger would Harm Rural Consumers

3. The Applicants claim the merger will not harm rural consumers is mere lip service made in hopes of receiving approval of the merger. Satellite Receivers, as well as several other groups that oppose the merger, believes that the merger will reduce, if not eliminate, the growth of broadband service in rural areas.

4. As shown by the National Rural Telecommunications Cooperative (the “NRTC”) and Pegasus Communications, the merger will leave rural consumers with very little choice in multi-video programming providers.² Many rural households are served solely by analog cable systems. These analog programming providers are no real alternative to the multi-channel DBS providers.³ Presently, EchoStar and DIRECTV compete for these customers and the consumers benefit from that

¹ Comments of the Competitive Enterprise Institute, pg 2.

² NRTC’s Petition to Deny, CS Docket 01-348 pgs. 6-22 and Pegasus’ Petition to Deny, CS Docket 01-348 pgs. 11-18.

³ NRTC, pgs. 20-22.

competition in the form of lower prices and, it is assumed, better service. These benefits will be erased should the merger be allowed to create one DBS licensee. Rural consumers will be left with two choices: an unrestrained New EchoStar, free from the checks and balances of competition, and analog cable. New EchoStar will be able to increase their service fees and reduce their level of service, as they would not face any substantial competition.

5. The NRTC points out that EchoStar and Hughes have fought, and continue to fight, Congressionally mandated local-into-local must-carry requirements tooth and nail.⁴ EchoStar and Hughes denied a large number of must-carry requests in some of the nation's largest markets with specious reasoning; some of these denials have even been plainly contradictory to the law.⁵ This is but a precursor of what is to come if the merger is allowed to take place. EchoStar and Hughes have sought to avoid their requirements to deliver local programming to the top markets. What will happen to the small rural communities? If past practice is of any indication, New EchoStar will ignore these communities and the provision of broadband service, which will include local programming, to rural areas will be left to new entrants, such as Satellite Receivers.

Barriers to Entry that will be Created by the Merger

6. If the Commission does decide to grant the merger, Satellite Receivers requests that the Commission do everything in its power to facilitate the entrance of new broadband providers into the marketplace; including the grant of Satellite Receivers'

⁴ NRTC's Petition to Deny, CS Docket No. 01-348 paras. 136-138.

⁵ NRTC Petition to Deny, para. 137.

application for a Multi-Video and Data Distribution Service ("MVDDS") license. The Commission has already determined that MVDDS is a viable service, if steps to mitigate interference to other licenses are taken. As previously noted, if the Commission were to grant the merger, a number of consumers would be without a choice of multi-video programming providers.ⁱ The grant of MVDDS licenses would result in three choices of program delivery for consumers: MSOs/cable companies, a consolidated DBS entity and MVDDS providers. This would ensure that there are at least two multi-video programming providers for consumers, DBS and MVDDS.

7. Another prospective MVDDS licensee, Northpoint Technologies, Inc., notes that without mandated open protocols and standards to New EchoStar's delivery of broadband services, New EchoStar will be able to block new services from entering consumers' homes.⁶ New services like MVDDS may require the consumer to attach third party equipment to their set top boxes or be received through their DBS receivers. If New EchoStar is allowed to maintain a proprietary standard for its equipment, it will eliminate its customers from the pool of consumers who would benefit from new technologies such as MVDDS. Satellite Receivers joins with Northpoint and requests, if the merger is to be granted, that the Commission mandate that New EchoStar maintain open protocols and standards so as not to foreclose the introduction of new services into the broadband market.

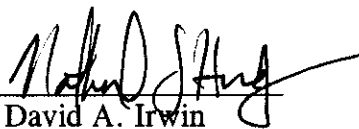
⁶ Northpoint's Petition to Deny, CS Docket No. 01-348 pgs. 8-11. Although Satellite Receivers agrees with Northpoint on this issue, Satellite Receivers objects to Northpoint's insinuation that it is the sole MVDDS provider. *Id.* pgs. 5, 12-14. The FCC has not granted any entity a license to provide MVDDS. There are a number of applicants, including Satellite Receivers, who have requested MVDDS licenses.

8. NRTC suggests that MVDDS would not be a strong competitor to a New EchoStar.⁷ The Commission, and more importantly, consumers, will never know if MVDDS would compete with a DBS monopoly, unless the Commission does all it can to ensure that new services will not be shut out of the marketplace if the merger is granted.

Conclusion

9. The proposed merger will create a monopoly provider that could easily use its monopoly status to hurt consumers and hinder the growth of new technologies and new entrants to the broadband market. Satellite Receivers, as a proposed new entrant to the broadband market, urges the Commission to deny the transfer applications. If the merger is to be allowed, the Commission must provide for the future of new service providers and place conditions on the merger that will do so.

SATELLITE RECEIVERS, LTD.

By: 
David A. Irwin
Nathaniel J. Hardy

Its Attorneys
IRWIN, CAMPBELL &
TANNENWALD, P.C.
1730 Rhode Island Avenue, N.W.,
Suite 200
Washington, D.C., 20035-3101
202/728-0400
202/728-0354 (facsimile)
dirwin@ictpc.com

Date: February 25, 2002

⁷ Comments of NRTC, para. 62-66.

CERTIFICATE OF SERVICE

I, Donna L. Brown, hereby certify that on this 26th day of February 2002 a true and correct copy of the foregoing was served via hand delivery (indicated by *) or by first-class mail, postage pre-paid upon the following:

Chairman Michael K. Powell*
Federal Communications Commission
445 12th St. S.W.
Washington DC 20554

Commissioner Kathleen Q. Abernathy*
Federal Communications Commission
445 12th St. S.W.
Washington DC 20554

Donald Abelson*
Federal Communications Commission
445 12th St. S.W.
Washington DC 20554

William F. Caton*
Acting Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20003

Commissioner Michael J. Copps*
Federal Communications Commission
445 12th St. S.W.
Washington DC 20554

Commissioner Kevin J. Martin*
Federal Communications Commission
445 12th St. S.W.
Washington DC 20554

Catherine Crutcher Bohigan*
Federal Communications Commission
445 12th St. S.W.
Washington DC 20554

Susan M. Eid*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

W. Kenneth Ferree*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Claudia Fox*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

James Bird*
Federal Communications Commission
445 12th St. S.W.
Washington DC 20554

Rosalee Chiara*
Federal Communications Commission
445 12th St. S.W.
Washington DC 20554

Barbara Esbin*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Eloise Gore*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Jennifer Gilsenan*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Thomas Horan*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Julius Knapp*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Paul Margie*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Fem Jarmulnek*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

JoAnn Lucanik*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Jackie Ponti*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

David Sappington*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Ellen Rafferty*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Royce Dickens Sherlock*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Bryant Tramont*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Douglas W. Webbink*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Donald Stockdale*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Thomas S. Tycz*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Marcia Glauberman*
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Scott R. Flick
Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037
Counsel to Univision Communications

John Grossman
Columbus Education Association
929 East Broad Street
Columbus, OH 43205

Ted S. Lodge
President & Chief Operating Officer
Pegasus Communications Corporation
225 City Line Avenue, Suite 200
Bala Cynwyd, PA 19004

Steven T. Berman
Adam D. Schwartz
National Rural Telecommunications
Cooperative
2121 Cooperative Way
Suite 500
Herndon, VA 20171

Jack Richards
Kevin G. Rupy
Keller and Heckman LLP
1001 G Street, N.W., Suite 500 West
Washington, DC 20001
*Counsel to National Rural
Telecommunications Cooperative*

Paul Cicelski
Michael W. Richards
Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037
Counsel to Univision Communications

Robert M. Cooper
Patrick J. Grant
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004
Counsel for Pegasus Communications Corp.

Robert J. Rini
Stephen E. Coran
Stephen M. Ryan
Manatt, Phelps, & Phillips, LLP
1501 M Street, N.W., Suite 700
Washington, DC 20005-1700
*Counsel to National Rural
Telecommunications Cooperative*

Thomas P. Olson
Nicole Telecki
Maya Alexandri
C. Colin Rushing
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037
*Counsel to National Association of
Broadcasters*

Edward P. Henneberry
Dylan M. Carson
Pradeep Victor
Howrey Simon Arnold & White LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
*Counsel to National Association of
Broadcasters*

Peter C. Pappas
Pappas Telecasting Companies
1299 Pennsylvania Avenue, N.W.
10th Floor
Washington, DC 20004

Henry L. Baumann
Benjamin F. P. Ivins
National Association of Broadcasters
1771 N Street, N.W.
Washington, DC 20036

Charles B. Slocum
Writers Guild of America, West, Inc.
7000 W. 3rd Street
Los Angeles, CA 90048

Country Peddler
3102 Route 9, South
Rio Grande, NJ 08242

The Honorable Olympia J. Snowe
154 Russell Senate Office Building
Washington, DC 20510-1903

The Honorable Max Baucus
United States Senate
Washington, DC 20510

Jason Brostrom
NetExpress, LLP
3101 Illinois Drive
Bismarck, ND 58501

Dick Maxell
Buckeye Association of School
Administrators
850 N. High Street
Suite 150
Columbus, OH 43235

James V. DeLong
Competitive Enterprise Institute
Senior Fellow - Project on Technology
and Innovation
1001 Connecticut Ave., N.W.
Suite 1250
Washington, DC 20036

George Landrith
Frontiers of Freedom
12011 Lee Jackson Mem. Hwy.
Suite 310
Fairfax, VA 22033

Alan McCollough
W. Stephen Cannon
Circuit City Stores, Inc.
9950 Maryland Drive
Richmond, VA 23233

Robert S. Schwartz
McDermott, Will & Emery
600 13th Street, N.W. 1650
Washington, DC 20005
Counsel to Circuit City Stores, Inc.

Deborah A. Lathen
Lathen Consulting
Tysons Boulevard, Suite 1150
McLean, VA 22102
Counsel for Northpoint Technology, Ltd.

Gene Kimmelman
Christopher Murray
Consumers Union
1666 Connecticut Avenue, N.W.
Suite 310
Washington, DC 20009

Dr. Mark Cooper
Consumer Federation of America
1424 16th Street, N.W.
Suite 604
Washington, DC 20036

Cheryl Leanza
Media Access Project
1625 K Street, N.W.
Suite 1118
Washington, DC 20006

John R. Feore, Jr.
Kevin P. Latek
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036
Counsel to Paxson Communications
Corporation

Barry D. Wood
Stewart W. Nolan, Jr.
Wood, Maines & Brown, Chartered 1827
Jefferson Place, N.W.
Washington, DC 20036
Counsel to Brunson Communications, Inc.

David Almasi
Project 21
The National Center for Public
Policy Research
777 North Capitol St., N.E.
Washington, DC 20002-4294

Jeffrey A. Eisenach
Randolph J. May
Progress and Freedom Foundation
1301 K Street, N.W.
Suite 550 East
Washington, DC 20005

Barry D. Wood
Stewart W. Nolan, Jr.
Wood, Maines & Brown, Chartered
1827 Jefferson Place, N.W.
Washington, DC 20036
Counsel to Eagle III Broadcasting, LLC

John W. Katz
Office of the State of Alaska
Suite 336
444 N. Capitol Street, N.W.
Washington, DC 20001

Robert M. Halperin
Bridget E. Calhoun
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
Counsel to the State of Alaska

Rick Bauermeister
Market Solutions Group, Inc.
380 North Dakota Avenue
Sioux Falls, SD 57104

Russell L. Hanson
North Dakota Retail Association
1025 North 3rd Street
Bismarck, ND 83502

Christopher C. Cinnamon
Emily A. Denney
Nicole E. Paolini
Cinnamon Mueller
307 North Michigan Avenue
Suite 1020
Chicago, Illinois 60601
Counsel for American Cable Association

Paul Greco
Public Broadcasting Service
1320 Braddock Place
Alexandria, VA 22314-1698

Susan Fischetti
Fischetti Enterprises, Inc.
10336 Stewart Drive
Eagle River, Alaska 99577

Lois Hartman
North Dakota Firefighter's Association
1 13 S. 5th Street
P.O. Box 6127
Bismarck, ND 58506-6127

David Charles, MD
Medical Researchers and Teaching
Physicians
P.O. Box 19241
Washington, DC 20036-0241

Tom Davidson
Phil Marchesiello
Akin, Gump, Strauss, Hauer & Feld, L.L.P.
1676 International Drive
Penthouse
McLean, VA 22102
Counsel for Vivendi Universal, S.A.

Jonathan D. Blake
Amy L. Levine
Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, DC 20004-2401
Counsel to the Association of
Public Television Stations and the Public

Debbie Goldman
George Kohl
Communications Workers of America
501 Third Street, N.W.,
Washington, DC 20001

Mark T. Rose
United States Internet Council
1301 K Street, N.W.
Suite 350
East Tower
Washington, DC 20005

John R. Feore, Jr.
Kevin P. Latek
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Ave., NW
Suite 800
Washington, DC 20036
Counsel for Paxson Communications
Corporation

Marilyn Mohnnan-Gillis
Lonna D. Thompson
Andrew D. Cotlar
Association of Public Television Stations
666 11th Street, N.W.
Suite 1100
Washington, DC 20001

William D. Silva
Law Offices of William D. Silva
5335 Wisconsin Avenue, NW.
Suite 400
Washington, DC 20015-2003
Counsel to the Word Network

Thomas P. Olson
Wilmer, Cutler & Pickering
2445 M. Street, NW.
Washington, DC 20037
Counsel for National Association of
Broadcasters

State Representative (Mont.)
Dave Lewis
P.O. Box 200400
Helena, MT 59620-0400
Washington, DC 20036

Rick Dovalina
League of United Latin American Citizens
2000 L Street, N.W.
Suite 610
Washington, DC 20036

Marvin Rosenberg
Wallace F. Tillman
Tracy B. Steiner
National Rural Electric Cooperative
Association
4301 Wilson Blvd.
Arlington, VA 22203-1860

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, DC 20006-6801
Counsel for Hubbard Broadcasting, Inc.

G. Nanette Thompson
Regulatory Commission of Alaska
701 W. 8th Avenue
Suite 300
Anchorage, AK 99501

Amy Pastor
Church Point Area
Chamber of Commerce
P.O. Box 218
216 N. Main Street
Church Point, Louisiana 70525

Grover G. Norquist
Americans for Tax Reform
1920 L Street, NW
Suite 200
Washington, DC 20036

Albert A. Foer
American Antitrust Institute
2919 Ellicott Street, NW.
Washington, DC 20008

Matthew M. Polka
American Cable Association
One Parkway Center
Suite 212
Pittsburgh, PA 15220
*Counsel to Carolina Christian Television,
Inc. and LeSea Broadcasting Corporation*

Mark A. Balkin
Joseph C. Chautin, III
Hardy, Carey & Chautin LLP
110 Veterans Blvd.
Suite 300
Metairie, LA 70005

The Honorable M.J. Foster, Jr.
Governor
Office of the Governor
State of Louisiana
Baton Rouge, LA 70804-9004

Robert Scagliore
Sharp Electronics Corporation
Sharp Plaza
P.O. Box 650
Mahwah, NJ 07430-2135

Mark Sorensen
ACC Satellite TV
1144 W. East Avenue
Chico, CA 95926

The Honorable Chuck Hagel
United States Senate
Washington, DC 20510-2705

Edward T. Clark
Central Plains Clinic
4708 S. Wildwood Circle
Sioux Falls, SD 57105

Edward T. Clark
Central Plains Clinic
4708 S. Wildwood Circle
Sioux Falls, SD 57105

The Honorable William J. Janklow
Governor
State of South Dakota
State Capitol
500 East Capitol
Pierre, SD 57501-5070

Jeff Blum
U.S. Action
1341 G Street, N.W.
Suite 1000
Washington, DC 20005

Steven P. Smith
331 Dry Gulch Road
Ovando, MT 59854

The Honorable Tom Udall
502 Cannon House Office Building
Washington, DC 20515

David P. McClure
United States Internet Industry
Association
815 Connecticut Avenue, N.W.
Suite 620
Washington, DC 20006

Jerry A. Day
431 Walker Hollow Drive
Monterey, TN 38574-7096

Leland Swenson
President
National Farmers Union
400 North Capitol Street, Suite 790
Washington, DC 20001

Toni Docker
3672 Hardin Way
Soquel, CA 95073

State Senator (La.) Noble Ellington
4272 Front Street
Winnsboro, LA 71295

Joe Fiero
Third Millenium Communications &
Electronics Co., LLC
436 West Commodore Blvd., #9
Jackson, NJ 08527

Ted Glaser
Glaser Farms
P.O. Box 61
Oscar, LA 70762

State Senator (Mo.) Martin Hohulin
State Capitol, Room 101-C
Jefferson City, MO 65101-6806

Bill Gallagher
Farm Bureau Financial Services
629 Helena Avenue
Helena, MT 59601

Senator Ernest F. Hollings
United States Senate
Washington, DC 20510-6025

The Honorable Tim Johnson
United States Senate
Washington, DC 20510-4104

Arthur V. Belendiuk
Anthony M. Alessi
Smithwick & Belendiuk
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, DC 20016
*Counsel to Johnson Broadcasting, Inc. and
Johnson Broadcasting of Dallas*

Mary Elizabeth Jones, ED.D
48043 Snowboard Circle
Sioux Falls, SD 57108

Jeffrey P. Masten
Medical X-Ray Center
1417 South Minnesota
Sioux Falls, SD 57105

National Consumers League
1701 K Street, N.W.
Suite 1200
Washington, DC 20006

Chris N. Miller
Ohio Licensed Beverage Association
37 West Broad Street
Suite 480
Columbus, OH 43215

The Honorable Conrad Burns
United States Senate
Washington, DC 20510-2603


The National Grange of the Order
of Patrons of Husbandry
1616 H Street, N.W.
Washington, DC 20006

Andrew Z. Schwartz
Richard W. Binka
Richard M. Brunell
Foley Hoag & Eliot, LLP
1 Post Office Square
Boston, MA 02109
Counsel to PrimeTime 24 Joint Venture

David B. Meltzer
Intelsat Global Service Corporation
3400 International Drive, NW
Washington, DC 20008 -3006

Jared Abbruzzese
World Satellite Network, Inc.
11044 Research Blvd.
Suite C-500
Austin, TX 78759

State Representative (Wis.)
Kitty Rhoades
P.O. Box 8953
Madison, WI 53708


Donna L. Brown

* Hand delivery